

## Valuation of Taxable Service

### 4.1 Valuation of taxable services for charging service tax [Section 67]

Section 67 provides for the valuation of taxable services. The provisions of this section are discussed below:

- (1) **Consideration in terms of money:** If the consideration for a taxable service is in terms of money, the value of such service shall be the gross amount charged by the service provider for such service provided or to be provided by him.
- (2) **Consideration not wholly or partly in terms of money:** If the consideration for a taxable service is not wholly or partly in terms of money, then the value of such service shall be such amount in money, with the addition of service tax charged, is equivalent to the consideration.
- (3) **Consideration not ascertainable:** If the consideration for a taxable service is not ascertainable, the value of such service shall be the amount as may be determined in the prescribed manner.
- (4) **Where the gross amount charged is inclusive of service tax payable:** Where the gross amount charged by a service provider, for the service provided or to be provided is inclusive of service tax payable, the value of such taxable service shall be such amount as, with the addition of tax payable, is equal to the gross amount charged.

#### Illustration

Rishabh provides a taxable service to Padam for a consideration of ₹ 10,000 inclusive of service tax at 12.36%. The value, in such case, shall be computed as  $\frac{10,000}{1.1236}$  or

$$\left[ 10,000 \times \frac{100}{112.36} \right] = ₹ 8,900.$$

- (5) **Gross amount charged includes amount received before/during/after the provision of such service:** The gross amount charged for the taxable service shall include any amount received towards the taxable service either before, during or after the provision of such service.
- (6) Subject to the aforementioned provisions, the value of a taxable service shall be determined in such manner as may be prescribed [prescribed in the Service Tax (Determination of Value) Rules, 2006].

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1. **Gross amount charged** includes payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and book adjustment, and any amount credited or debited, as the case may be, to any account, whether called "suspense account" or by any other name, in the books of account of a person liable to pay service tax, where the transaction of taxable service is with any associated enterprise.
2. **Consideration** includes any amount that is payable for the taxable services provided or to be provided.

### 4.2 Service Tax (Determination of Value) Rules, 2006

*Notification No.12/2006-ST, dated 19.04.2006* has notified the Service Tax (Determination of Value) Rules, 2006. They came into force from 19.04.2006.

The words and expressions used in these rules and not defined but defined in the Finance Act, 1994 shall have the meaning respectively assigned to them in the Act.

(1) **Determination of value of service in relation to money changing [Rule 2B]**: Rule 2B provides the manner of determination of the value of taxable service provided so far as the services so provided pertains to purchase or sale of foreign currency, including money changing. The value of service shall be determined as follows:-

- (a) **For a currency, when exchanged from, or to, Indian Rupees (INR)**: For a currency, when exchanged from, or to, Indian Rupees (INR), the value shall be equal to the difference in the buying rate or the selling rate, as the case may be, and the Reserve Bank of India (RBI) reference rate for that currency at that time\*, multiplied by the total units of currency.

**\*Note: Where the RBI reference rate for a currency is not available**

Where the RBI reference rate for a currency is not available, the value shall be 1% of the gross amount of Indian Rupees provided or received, by the person changing the money.

**Example I:** US\$ 1,000 are sold by a customer at the rate of ₹ 45 per US\$.

RBI reference rate for US\$ is ₹ 45.50 for that day.

Value of taxable service= (RBI reference rate for \$ – Selling rate for \$) × Total units

= ₹ (45.50 - 45) × 1,000 = ₹ 0.50 × 1,000

The taxable value shall be ₹ 500.

**Example II:** INR 70,000 is changed into Great Britain Pound (GBP) and the exchange rate offered is ₹ 70, thereby giving GBP 1000.

RBI reference rate for that day for GBP is ₹ 69.

The taxable value shall be ₹ 1,000.

- (b) **Where neither of the currencies exchanged is Indian Rupee**: Where neither of the currencies exchanged is Indian Rupee, the value shall be equal to 1% of the lesser of the two amounts the person changing the money would have received by converting any of the two currencies into Indian Rupee on that day at the reference rate provided by RBI.

**(2) Manner of determination of value when such value is not ascertainable [Rule 3]:**

The value of taxable service, where such value is not ascertainable, shall be determined by the service provider in the manner described below.

Subject to the provisions of section 67, the value of taxable service, where such value is not ascertainable, shall be determined by the service provider in the following manner:-

**(a) Value of similar services:** The value of taxable service shall be equivalent to the gross amount charged by the service provider to provide similar service to any other person subject to fulfillment of the conditions below:

1. Such service is in the ordinary course of trade.
2. The gross amount charged is the sole consideration.

**(b) When value of similar services cannot be ascertained:** Where the value cannot be determined in accordance with clause (a), the service provider shall determine the equivalent money value of such consideration. However, such value shall, in no case be less than the cost of provision of such taxable service.

**(3) Rejection of value by Central Excise Officer and its determination thereon [Rule 4]**

**(a) Central Excise Officer empowered to verify the value adopted by the service provider:** The Central Excise Officer shall have the power to satisfy himself as to the accuracy of any information furnished or document presented for valuation. In other words, where there are adequate reasons warranting verification of the value adopted by the service provider for payment of service tax, rule 4 specifically enables verification of records in such cases.

**(b) Rule 3 would not restrict such power:** The provisions contained in rule 3 shall not restrict or put to question such power of the Central Excise Officer.

**(c) Issue of show cause notice (SCN):** A show cause notice (SCN) shall be issued to the service provider, if the Central Excise Officer is satisfied that the value determined by such service provider is not in accordance with the provisions of the Act or these rules.

**(d) SCN to specify the amount of service tax fixed:** Such show cause notice will specify the amount of service tax fixed by the Central Excise officer.

**(e) Provision of opportunity of being heard and determination of value of taxable service:** The Central Excise Officer shall provide a reasonable opportunity of being heard, to the service provider. Thereafter, he shall determine the value of such taxable service for the purpose of charging service tax in accordance with the provisions of the Act and these rules.

**(4) Inclusion in or exclusion from value of certain expenditure or costs [Rule 5]**

**(a) General provision:** The expenditure or costs incurred by the service provider in the course of providing taxable service forms integral part of the taxable value of the service provided or to be provided. Therefore, they shall be included in the value for the purpose of charging service tax on the said service. It shall not be relevant that various expenditure or costs are separately indicated in the invoice or bill issued by the service

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provider to his client.

This is a general rule which makes it clear that even when such expenditure or costs are recovered separately by service provider from the service receiver, the same are includible for discharging the service tax.

##### **Explanation to rule 5(1)-Value of taxable service for the telecommunication service**

For the removal of doubts, it is hereby clarified that for the telecommunication service, the value of the taxable service shall be the gross amount paid by the person to whom telecom service is provided by the telegraph authority.

Hence, in case of service provided by way of recharge coupons or prepaid cards or the like, the value shall be the gross amount charged from the subscriber or the ultimate user of the service and not the amount paid by the distributor or any such intermediary to the telegraph authority.

**Individual components of total consideration even if indicated separately in invoice would also form part of value of taxable service:** It is clarified that the value of the taxable service is the total amount of consideration consisting of all components of the taxable service and it is immaterial that the details of individual components of the total consideration is indicated separately in the invoice.

**Illustration 1** - In the course of providing a taxable service, a service provider incurs costs such as travelling expenses, postage, telephone, etc., and may indicate these items separately on the invoice issued to the recipient of service. In such a case, the service provider is not acting as an agent of the recipient of service but procures such inputs or input service on his own account for providing the taxable service. Such expenses do not become reimbursable expenditure merely because they are indicated separately in the invoice issued by the service provider to the recipient of service.

**Illustration 2** - A contracts with B, an architect for building a house. During the course of providing the taxable service, B incurs expenses such as telephone charges, air travel tickets, hotel accommodation, etc., to enable him to effectively perform the provision of services to A. In such a case, in whatever form B recovers such expenditure from A, whether as a separately itemised expense or as part of an inclusive overall fee, service tax is payable on the total amount charged by B. Value of the taxable service for charging service tax is what A pays to B.

**Illustration 3** - Company X provides a taxable service of rent-a-cab by providing chauffeur-driven cars for overseas visitors. The chauffeur is given a lump sum amount to cover his food and overnight accommodation and any other incidental expenses such as parking fees by the Company X during the tour. At the end of the tour, the chauffeur returns the balance of the amount with a statement of his expenses and the relevant bills. Company X charges these amounts from the recipients of service. The cost incurred by the chauffeur and billed to the recipient of service constitutes part of gross amount charged for the provision of services by the Company X.

- (b) **Amounts paid to the third party by the service provider as a “pure agent” of the client not to be included in the taxable value:** There could be situations where the client of the service provider specifically engages the service provider, as his agent, to contract with the third party for supply of any goods or services on his behalf. In those cases, such goods or services so procured are treated as supplied to the client rather than to the contracting agent. The service provider in such cases incurs the expenditure purely on behalf of his client in his capacity as an agent, i.e. “pure agent” of the client. Amounts paid to third party by the service provider as a pure agent of his client can be treated as reimbursable expenditure and shall not be included in taxable value.

**Conditions to be satisfied in this regard:-** Subject to the provisions mentioned in point (a) above, the expenditure or costs incurred by the service provider as a pure agent of the recipient of service shall be excluded from the value of the taxable service if all the following conditions are satisfied:

- (i) the service provider acts as a pure agent of the recipient of service when he makes payment to third party for the goods or services procured;
- (ii) the recipient of service receives and uses the goods or services so procured by the service provider in his capacity as pure agent of the recipient of service;
- (iii) the recipient of service is liable to make payment to the third party;
- (iv) the recipient of service authorises the service provider to make payment on his behalf;
- (v) the recipient of service knows that the goods and services for which payment has been made by the service provider shall be provided by the third party;
- (vi) the payment made by the service provider on behalf of the recipient of service has been separately indicated in the invoice issued by the service provider to the recipient of service;
- (vii) the service provider recovers from the recipient of service only such amount as has been paid by him to the third party; and
- (viii) the goods or services procured by the service provider from the third party as a pure agent of the recipient of service are in addition to the services he provides on his own account.

#### **Meaning of pure agent**

**“Pure agent”** means a person who–

- (a) enters into a contractual agreement with the recipient of service to act as his pure agent to incur expenditure or costs in the course of providing taxable service;
- (b) neither intends to hold nor holds any title to the goods or services so procured or provided as pure agent of the recipient of service;
- (c) does not use such goods or services so procured; and
- (d) receives only the actual amount incurred to procure such goods or services.

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**Illustration** – X contracts with Y, a real estate agent to sell his house and thereupon Y gives an advertisement in television. Y billed X including charges for Television advertisement and paid service tax on the total consideration billed. In such a case, consideration for the service provided is what X pays to Y. Y does not act as an agent on behalf of X when obtaining the television advertisement even if the cost of television advertisement is mentioned separately in the invoice issued by X. Advertising service is an input service for the estate agent in order to enable or facilitate him to perform his services as an estate agent.

Above illustration provides the distinction between payment made as “pure agent” and payment made as “principal”.

### (c) Clarification

Issue	Clarification
<p>The principal job of a custom house agent (CHA) is to get the import/export consignments cleared through customs. However, at times they also provide services for packing, unpacking, loading, unloading, bringing or removing the goods to or from the customs area, vessels or aircrafts for their customers (i.e. importers or exporters). CHAs initially pay the service charges to these agencies and later recover these charges from the customer along with their own charges CHAs. Similar arrangement can occur for payment of statutory levies like custom duties, port charges, cesses etc. leviable on the said goods.</p> <p>Whether the charges which are said to be paid by the CHAs and later recovered from the customers (i.e. reimbursable charges) should be added to the value for charging service tax from CHAs?</p>	<p>It is clarified that the aforesaid reimbursable charges would be excluded from the value of taxable service if all the following conditions are satisfied, -</p> <ul style="list-style-type: none"><li>(a) The activity/service for which a charge is made should be in addition to provision of CHA service.</li><li>(b) There should be arrangement between the customer &amp; the CHA which authorizes or allows the CHA to:-<ul style="list-style-type: none"><li>(i) arrange for such activities/services for the customer; and</li><li>(ii) make payments to other service providers on his behalf;</li></ul></li><li>(c) The CHA does not use the activities/services for his own benefit or for the benefit of his other customers;</li><li>(d) The CHA recovers the reimbursements on 'actual' basis i.e. without any mark-up or margin.</li><li>(e) CHA should provide evidence to prove nexus between such other than CHA services provided and the reimbursable amounts. Similar would be the case for statutory levies, charges by carriers and custodians, insurance agencies and the like.</li><li>(f) Each charge for separate activities/services is to be covered either by a separate invoice or by a separate entry in a common invoice.</li></ul> <p>Any other miscellaneous/out of pocket expenses charged by the CHA would not be excluded.</p> <p><i>[Circular No. 119/13/2009-S.T. dated 21-12-2009]</i></p>

**(5) Service specific inclusion/exclusion of certain items from the value of taxable service [Rule 6]**

**(A) Inclusions:** Subject to the provisions of section 67, the value of the taxable services shall include–

- (i) the commission or brokerage charged by a broker on the sale or purchase of securities including the commission or brokerage paid by the stock-broker to any sub-broker;
- (ii) the adjustments made by the telegraph authority from any deposits made by the subscriber at the time of application for telephone connection or pager or facsimile or telegraph or telex or for leased circuit;
- (iii) the amount of premium charged by the insurer from the policy holder;
- (iv) the commission received by the air travel agent from the airline;
- (v) the commission, fee or any other sum received by an actuary, or intermediary or insurance intermediary or insurance agent from the insurer;
- (vi) the reimbursement received by the authorised service station, from manufacturer for carrying out any service of any motor car, light motor vehicle or two wheeled motor vehicle manufactured by such manufacturer;
- (vii) the commission or any amount received by the rail travel agent from the Railways or the customer;
- (viii) the remuneration or commission, by whatever name called, paid to such agent by the client engaging such agent for the services provided by a clearing and forwarding agent to a client rendering services of clearing and forwarding operations in any manner; and
- (ix) the commission, fee or any other sum, by whatever name called, paid to such agent by the insurer appointing such agent in relation to insurance auxiliary services provided by an insurance agent.
- (x) The amount realised as demurrage or by any other name whatever called for the provision of a service beyond the period originally contracted or in any other manner relatable to the provision of service.

**(B) Exclusions:** Subject to the provisions contained in sub-rule (1), the value of any taxable service, as the case may be, does not include–

- (i) initial deposit made by the subscriber at the time of application for telephone connection or pager or facsimile (FAX) or telegraph or telex or for leased circuit;
- (ii) the airfare collected by air travel agent in respect of service provided by him;

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- (iii) the rail fare collected by rail travel agent in respect of service provided by him;
- (iv) interest on delayed payment of any consideration for the provision of services or sale of property, whether moveable or immoveable and
- (v) the taxes levied by any Government (including foreign Governments, where a passenger disembarks) on any passenger travelling by air, if shown separately on the ticket, or the invoice for such ticket, issued to the passenger.
- (vi) accidental damages due to unforeseen actions not relatable to the provision of service.
- (vii) subsidies and grants disbursed by the Government, not directly affecting the value of service.